Re A Panjaram

HIGH COURT (ALOR SETAR) — ORIGINATING SUMMONS NO 24–705–1991
KC VOHRAH J
8 SEPTEMBER 1991

Legal Profession *— Pupillage — Conduct of matters on behalf of master — Original order permitting pupil to conduct matters on behalf of master — Application by master for variation of original order — Whether High Court has jurisdiction to vary order permitting pupil to conduct cause or matter in open court in sessions court — Legal Profession Act 1976 s 36(2) & (5)*

Words and Phrases *— 'Variation ... of the order referred to in subsection (2)' — Legal Profession Act 1976 s 36(5)*

Words and Phrases *— 'As in all the circumstances seems to be in the best interest of the profession' — Legal Profession Act 1976 s 36(5)*

The applicant, a pupil master, initially applied to the High Court and obtained an order ('the original order') for his pupil to appear in the High Court and the subordinate courts to conduct matters as provided in s 36(2) of the Legal Profession Act 1976 ('the Act'). The Bar Council and the State Bar Committee did not object to the application for the original order. The applicant subsequently applied under s 36(5) of the Act to vary the original order so as to enable the pupil, inter alia, to appear before the sessions court judge in open court at the expiration of three months from the date of the original order to conduct any cause or matter. The Bar Council objected to this application on the ground that any variation of any order under s 36(5) of the Act cannot go beyond the ambit of s 36(2) of the Act.

Held, dismissing the application:

(1) All the enumerated rights of appearance of a pupil under the terms of s 36(2) of the Act had been applied for and obtained by the applicant. There was nothing more the High Court could have added in respect of the rights in the original order.

(2) A variation of the original order under s 36(5) of the Act must mean a variation within the ambit of the terms of s 36(2) of the Act.

(3) A judge may not add words that are not in the statute, save only by way of necessary implication, nor may he interpret a statute according to his own views as to policy.

(4) The words 'as in all the circumstances seems to be in the best interest of the profession' in s 36(5) of the Act are general words qualifying the powers of the High Court to vary the original order in respect only of enumerated rights under s 36(2) of the Act, and cannot create any additional right of appearance. There must be clear and unequivocal conferment of such an additional right for the court to say that such a right exists.

[Bahasa Malaysia summary

Pemohon, seorang guru pelatih (pupil master), pada mulanya memohon kepada Mahkamah Tinggi dan memperolehi satu perintah ('perintah asal') untuk pelatihnya menghadiri Mahkamah Tinggi dan mahkamah rendah untuk menjalankan perkara seperti yang diperuntukkan dalam s 36(2) Akta Profesyen Undang-Undang 1976 ('Akta itu'). Majlis Peguam dan Jawatankuasa Peguam Negeri tidak membantah permohonan untuk perintah asal tersebut. Pemohon kemudiannya memohon di bawah s 36(5) Akta itu untuk mengubah perintah asal itu supaya membolehkan pelatih, antara lain, hadir di hadapan hakim mahkamah sesyen di mahkamah terbuka apabila selesai sudah masa tiga bulan daripada tarikh perintah asal itu untuk menjalankan sebarang kausa atau perkara. Majlis Peguam membantah terhadap permohonan ini atas alasan bahawa sebarang perubahan bagi sebarang perintah di bawah s 36(5) Akta itu tidak boleh melampaui batasan s 36(2) Akta itu.

Diputuskan, menolak permohonan itu:

(1) Kesemua hak kehadiran seorang pelatih yang disenaraikan di bawah terma s 36(2) Akta itu telah dipohonkan dan diperolehi oleh pemohon. Tiada apa lagi yang boleh ditambah oleh Mahkamah Tinggi berkenaan dengan hak dalam perintah asal itu.

(2) Perubahan perintah asal di bawah s 36(5) Akta itu mesti bermaksud perubahan di dalam batasan terma s 36(2) Akta itu.

(3) Seseorang hakim tidak boleh menambah perkataan yang tidak ada dalam statut, kecuali hanya melalui implikasi yang perlu, dan juga tidak boleh mentafsir satu statut mengikut pendapat sendirinya tentang polisi.

(4) Perkataan 'as in all the circumstances seems to be in the best interest of the profession' dalam s 36(5) Akta itu adalah perkataan am yang menghadkan kuasa Mahkamah Tinggi untuk mengubah perintah asal berkenaan hanya dengan hak yang disenaraikan di bawah 36(2) Akta itu, dan tidak boleh membentuk sebarang hak kehadiran tambahan. Perlu ada pemberian yang jelas dan yang tidak meragukan sama sekali akan hak tambahan tersebut untuk mahkamah mengatakan bahawa hak tersebut wujud.]

Cases referred to

1 *Re Vazeer Alam Mydin Meera* [1991] 3 MLJ 386 (not folld)
2 *Shah v Barnet London Borough Council* [1983] 1 All ER 226 (folld)

Legislation referred to

Legal Profession Act 1976 s 36(2), (3), (5)

Choe Kuan Him (*Syarikat Choe*) for the applicant.
C Shanmugaiah (*C Shanmugaiah & Co*) for the Bar Council.

Cur Adv Vult

KC Vohrah J: Subsection (2) of s 36 of the Legal Profession Act 1976 ('the Act') confers certain statutory rights on a pupil of a master to appear, under certain conditions, in the High Court and in the subordinate courts. An application to the High Court for these rights to be extended to a pupil would have to be made by the pupil's master. Section 36(2) reads:

> A Judge may, upon application made in Chambers by a Master at the commencement of the pupillage of the Master's pupil, make an order that the pupil be permitted to appear on behalf of the Master or of the firm in which the Master is practising —
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> (a) during the period of three months from the date of the order —
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> (i) before a Judge or a Registrar of the High Court, in Chambers;
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> (ii) before a President of the Sessions Court or a Magistrate, in Chambers;
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> (iii) before a Registrar of the Subordinate Courts,
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> to mention a case, including entering judgment in default, or to apply for bail or to take a consent judgment or order; and
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> (b) at the expiration of the said period of three months in chambers in the High Court and in the Subordinate Courts and before any magistrate, to conduct any cause or matter.

On 27 June 1991 the applicant, a master, applied to the High Court and obtained an order ('the original order') under s 36(2) of the Act for his pupil, Cik Lim Soo Lee, to appear in the High Court and the subordinate courts as limited by the terms of paras (a) and (b) of s 36(2) on behalf of him or his firm of solicitors. The Bar Council and the State Bar Committee were served with the application under s 36(3) of the Act and did not raise any objection to the application.

There is now an application before me under sub-s (5) of s 36 of the Act to vary the original order. The Bar Council objects to the application.

The application is for a variation of the original order so that Cik Lim, who was permitted under the said order, inter alia, to appear before a judge of the sessions court in chambers under para (b) of s 36(2), may be permitted to appear before a judge of the sessions court in open court at the expiration of the three months from the date of the said order to conduct any cause or matter. It will be noted that no such right is conferred under any of the paragraphs of s 36(2).

Counsel for the applicant has relied on the case of *Re Vazeer Alam Mydin Meera*[1] to say that I do have the power, under s 36(5) of the Act, to make the order of variation.

Counsel for the Bar Council says that there is no such power; any variation of any order made under s 36(2) cannot go beyond the ambit of the terms spelt therein; and the appearance of a pupil before a judge of the sessions court is restricted to the appearance of the pupil before him in chambers only under para (b) of s 36(2). I regretfully have to agree with that conclusion.

The variation sought by the master is not a matter of seeking a right of appearance under an enumerated right under s 36(2) which was denied his pupil in the original order for some reason or other. Conceivably, the denial of an enumerated right of appearance could have arisen if the master had not applied for that particular right to be extended to his pupil. On the other hand, it could also have arisen if he had applied for all the rights under

s 36(2) to be extended and the Bar Council had objected to one of the rights being extended and the High Court upheld the objection. A

In the present case, all the enumerated rights of appearance under all the terms of s 36(2) were sought for by the master for his pupil and the High Court did not deny the pupil any of the rights under any of the terms. There was nothing more that the master could have applied for under s 36(2) and there was nothing more the High Court could have added in respect of the rights in the original order. B

If all the enumerated rights of appearance had been fully extended to the pupil when the High Court made the original order, it does mean that the High Court had exercised its powers conferred under that provision to full measure as there was no more right that could be given to the pupil. C

It is hard to see what residual power the High Court has except, for good reason, to withdraw one or more of the rights of appearance which were given through a variation of the original order, or to annul the whole said order by virtue of the powers of 'variation' or 'rescission' respectively, conferred under s 36(5) upon the court.

Subsection (5) of s 36 spells out these two powers thus — D

> The Master of the pupil, the Bar Council or the State Bar Committee may apply at any time during the pupillage of any pupil to any Judge in Chambers for a variation or rescission of the order referred to in subsection (2) and the Judge shall make such order on such application as in all the circumstances seems to be in the best interest of the profession. E

It seems to me a 'variation ... of the order referred to in subsection (2)' must mean a variation within the ambit of the terms of sub-s (2) of s 36. Thus if the original order had denied a pupil one or more of the rights under s 36(2) then the High Court may vary the original order in order to extend those rights to him 'as in all the circumstances seems to be in the best interest of the profession'. A variation may be made to withdraw one or more of the rights extended to him by the original order also 'as in all the circumstances seems to be in the best interest of the profession'. As for the power of 'rescission ... of the order referred to in subsection (2)', it seems clear that the court may annul the original order wholly again 'as in all the circumstances seems to be in the best interest of the profession'. F G

I am mindful that it would be salutary for pupils to appear in open court not only before magistrates but also before judges of the sessions court so that they may gain practical knowledge in the conduct of civil cases while in training before being called to the bar. But at the same time, it is necessary to bear in mind what was emphatically stated by the House of Lords in *Shah v Barnet London Borough Council*[2] at p 238 — that a judge may not add words that are not in the statute, save only by way of necessary implication; nor may he interpret a statute according to his own views as to policy, but if he can discover this from the statute or other material, which it is permissible for a court to consult, he may interpret it accordingly. H

In the present matter, I do not see any ambiguity in sub-ss (2) and (5) of s 36. Here is a case where certain rights of appearance have been created by statute and they are specifically enumerated in and their limits spelt out under s 36(2). It is hard to see how a right of appearance over and above I

these rights specifically enumerated and limited can be conferred by mere implication of language under sub-s (5) which is dependent on sub-s (2) for its existence. The words 'as in all the circumstances seems to be in the best interest of the profession' are general words qualifying the powers of the High Court to vary or annul the original order in respect only of the enumerated rights under sub-s (2) of s 36. These words cannot create any additional right of appearance. There must be clear and unequivocal conferment of an additional right for the court to say that such a right exists.

The application is dismissed. No order as to costs.

Application dismissed.

Reported by Wong Kian Kheong